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OFFICE OF PETITIONS

In re Application of
Mitsch et al
Application No. 09/915,960
Filed: July 27, 2001
Attorney Docket No. WAB 01067

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:
: DECISION DISMISSING
: PETITION
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This is a decision on the paper filed September 14, 2001, which is being treated as a petition under 37 CFR 1.10(c) requesting that the above-identified application be accorded a filing date of July 26, 2001, rather than the presently accorded filing date of July 27, 2001.

Petitioners allege that the application was deposited in Express Mail service on July 26, 2001. The petition is accompanied by a copy of Express Mail receipt No. EL729577071US (the same Express Mail number found on the original application papers). However, the legibility of the copy of Express Mail receipt No. EL729577071US is such that the USPS "date-in" entry cannot be positively identified.

A review of USPS records conducted at the U.S. Patent and Trademark Office prior to this decision using "USPTO's USPS Express Mail Information Database" reveals that the date and time the package identified by Express Mail receipt No. EL729577071US was accepted by the USPS is *July 27, at 9:34 a.m.* A copy of a printout of the relevant USPS records is being provided with this decision.

Paragraph (a) and 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See Section 1.6(a). (Emphasis supplied).

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can

show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

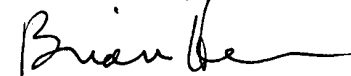
(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in", and of any other official notation by the USPS relied upon to show the date of deposit.

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the 'Express Mail' mailing label showing the 'date-in,' and of any other official notation by the USPS relied upon to show the date of deposit.

The petition filed September 14, 2001 is not accompanied by the evidence required by the rule. Accordingly, the petition is dismissed.

The application is being returned to Technology Center Art Unit 3613 for examination in due course with the filing date of July 27, 2001.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (703) 305-8859.



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enclosure: Copy of USPTO's USPS Express Mail Information